IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:01-12-2005

Coram:

The Honourable Mr. A.P. SHAH, The Chief Justice
and
The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

W.A. Nos.3093, 3710 and 4085 of 2003
and
W.A. Nos.1826 to 1831 of 2005

The Deputy Commercial Tax Officer
Tirupur Central I Assessment Circle :: Appellant in W.A. No.
Tirupur 3093 of 2003/Respondent in WP

The Commercial Tax Officer-I :: Appellant in W.A. No.
Sivakasi 3710 of 2003/Respondent in WP

The Deputy Commercial Tax :: Appellant in W.A. No.
Officer-II, Sivakasi 4085 of 2003/2nd Respondent in WP

:versus:

1.Cameo Exports
rep. by V. Sundararajan
Managing Partner
Tirupur
2.The Appellate Assistant
Commissioner (CT)
Pollachi :: R1 & R2 in W.A.3093/03/ 2nd Respondent, Petitioner

1.Vidhya Enterprises
rep by Partner,
S.R. Cheheran
Sivakasi
2.The Appellate Assistant
Commissioner (CT)
Virudhunagar :: R1 & R2 in W.A.3710/03 2nd Respondent, Petitioner

1.Kanna Papers
rep. by Proprietor R. Kannan
Sivakasi

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2.The Appellate Assistant
Commissioner (CT)
Virudhunagar :: R1 & R2 in W.A.4085/03/ 1st Respondent Petitioner in WP

Gobichettipalayam Agricultural Producers' Co-operative Marketing Society Limited, Gobichettipalayam, Erode :: Appellants in W.A.NOs 1826 to 1831 of 2005 Petitioner in all WPs

:versus:

1.The Deputy Commercial Tax Officer
Gobichettipalayam
2.The Appellate Assistant
Commissioner (CT)
Erode :: Respondents/Respondents in all WPs

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Appeals under Cl.15 of the Letters Patent against the orders dated 12-8-2003, 18.9-2003, 6-10-2003 and 17-8-2005 passed in W.P. Nos.22347, 26083, 27441 of 2003 and 36661 to 36666 of 2004 respectively.

1. These Petitions filed under Articel 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the second respondent pertaining to the order dated 2.7.2003 made in Na.Ka.1438/2003 and quash the same as illegal. (WP.No.22347/2003)

2. To issue a writ of Certiorarified Mandamus calling for the records in K.Dis.No.1647/2003 dated 23.7.2003 and K.Dis.No.2093/2003 dated 19.9.2003 on the file of the 1st respondent and quash the same as illegal and direct the 1st respondent to entertain the appeal without insisting for payment of 25% of disputed Tax (WP.No.26083 and 27441/2003)

3. To issue a writ of certiorari to call for the records on the files of the first respondent herein in N.K.1462/2003/A3 dated 22.9.2004 and to quash the proceedings (WP.No.36661 of 2004)

4. To call for the records on the files of the second respondent herein in Ref.Nos.1193/03A, 1194/03A, 1195/03A, 1196/03A, and 1197/03A dated 19.12.2003 and issue a writ of certiorarified mandamus and quashing the proceedings while directing the second respondent to entertain the appeal filed by the petitiners on 19.12.2003 along with stay application without seeking to apply

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respectively the condition of Pre-deposit of 25% of the difference between the tax assessed and admitted as introduced by Act 14/99 dated 31.5.99 (WP.Nos.36662 to 36666/2004 respectively.

For Appellants in W.A. Nos.3093/03 3710 & 4085/2003 :: Mr. T. Ayyasamy Spl. Govt. Pleader (Taxes)

For Respondents in W.A. Nos.3093/03 3710 & 4085/2003 :: Mr. A. Thiagarajan

For Appellants in W.A. Nos.1826/05 to 1831/05 :: Mr. N. Prasad

For Respondents W.A. Nos.1826/05 to 1831/05 :: Mr. T. Ayyasamy Spl. Govt. Pleader (Taxes)

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COMMON JUDGMENT

(Delivered by the Honourable The Chief Justice)

Since the issue involved in all these appeals is one and the same, the appeals are being disposed of by this common judgment.

2. In all these cases, the assessees, against the orders of assessment, have filed the appeals before the Appellate Assistant Commissioner (CT) under Sec.31 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter, for the brevity sake, referred to as 'the Act') and the appellate authority returned the appeal papers since appeals did not accompany the proof of payment of 25% of the disputed tax as per proviso 2 to Sec.31 of the amended Act 19 of 2002, with effect from 3-6-2002. Challenging the orders passed by the appellate authority, assessees have filed the present writ petitions.

3. In W.P. Nos.22347, 26083 and 27441 of 2003, the learned single Judge (K. Govindarajan, J.), following the decision in the case of ARASU RUBBER CORPORATION LTD. v. Addl. D.C.T.O. (Mad.), reported in 2002 Vol.126 STC 32, allowed the writ petitions and directed the appellate authority to entertain the appeals without insisting upon the pre-deposit of 25% of the disputed tax. While so, in the other batch of writ petitions, i.e. W.P. Nos.36661 to 36666 of 2004, the learned single Judge (K. Raviraja Pandian, J.), holding that the issue is covered by the decisions in the case of H.K. DADA (INDA) LTD. v. STATE OF MADHYA PRADESH (4 STC 114) and VITTHALBHAI NARANBHAI PATEL v.

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COMMISSIONER OF SALES TAX (12 STC 219), dismissed the writ petitions. Hence, the present writ appeals at the instance of the Revenue as well as the assessees.

4. In all these appeals, the issue involved is what is the crucial date on which the right of the assessees to prefer appeals against the order of assessment/re-assessment gets crystalised – whether it is the date of assessment order or the date on which return is filed or required to be filed as per the statute or the date of issuance of pre-assessment notice.

5. As against the order of assessment under Sec.12 of the Act or against the order of re-assessment under Sec.16 of the Act passed by the assessing authority, appeals lie under Sec.31 of the Act before the Appellate Assistant Commissioner. As per the second proviso to Sec.31 of the Act, as it stood prior to 10-6-1999, the appellant had to pay only the tax admitted by him to be due. By Tamil Nadu General Sales Tax (4th Amendment) Act, 1999 (Act No.14 of 1999), with effect from 10-6-1999, the second proviso to Sec.31 of the Act was amended to provide for mandatory pre-deposit of 25% of the difference between the tax assessed and admitted before a first appeal is entertained. Corresponding amendment was brought about to Sec.36 of the Act providing for a right of appeal to the Tamil Nadu Taxation Special Tribunal (in short 'the Tribunal) requiring mandatory pre-deposit of the entire taxes ordered to be due by the first appellate authority under Sec.31 of the Act. By Act 32 of 2000, effective from 26-11-2000, the pre-deposit under Sec.31 of the Act was reduced to 12.5% of the disputed tax. Finally, by Act 19 of 2002, effective from 3-6-2002, the pre-deposit under Sec.31 of the Act was once again raised to 25% of the disputed tax.

6. It is not disputed that the amended provisions of the Act are not given retrospective effect as and from an enterior date. In other words, the amended provisions are prospective. According to the appellants, the above restrictions placed on the appeals will not relate to the assessments and returns filed by the assessees prior to 14-6-1999. It is their submission that the amendment introducing condition of pre-deposit being substantive in nature cannot have retrospective effect and that their right of appeal is governed by the provisions on the dates they filed their monthly returns, which were prior to the Act 14 of 1999, and as on the said date, there was no mandatory condition for pre-deposit of disputed tax before the appeal was lodged.

7. According to the Revenue, on the other hand, although the right of appeal is substantive, it vests in an assessee only on the date when the order of final assessment is made under Sec.12(2) of the Act or the order of re-assessment is

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made under Sec.16 of the Act and, in any case, on the date when a notice for final assessment is issued under Sec.12(2) of the Act or a show cause notice for re-assessment is issued under Sec.16 of the Act and, since those events having taken place after the amendment brought about by Act 19 of 2002, effective from 23-6-2002, the appellants' right of appeal is governed only by the amended law.

8. The main questions to be decided are:

(1) Whether the right of an assessee to file an appeal is a substantive right? and

(2) Whether such a right get crystalised at the time of initiation of assessment proceedings?

9. In the case of HOOSEIN KASAM DADA (INDIA) LTD. v. THE STATE OF MADHYA PRADESH AND OTHERS (1953 Vol.IV STC 114 SC), the Supreme Court was required to consider a similar issue, which arose under Sec.22(1) of the Central Provinces and Berar Sales Tax Act, 1947. Under the proviso to Sec.22(1) of the said Act, as it stood prior to its amendment by the Central Provinces and Berar Sales Tax (Second Amendment) Act (LVII of 1949), an aggrieved assessee was entitled to appeal provided he paid such amount of tax as he might admit to be due from him, but after the amendment the appeal had to be accompanied by satisfactory proof of payment of the tax in respect of which the appeal had been preferred. The assessment proceedings of the assessee were initiated prior to the amendment of the section but the order of assessment was made after the amendment. The assessee contended that as the amendment had not been made retrospective its right of appeal under the original Section 22(1) remained unaffected and that such right of appeal was a substantive right which the assessee had acquired under the Sec.22(1) as it stood prior to amendment and the subsequent amendment to that section did not take away the right of appeal without depositing the impugned amount. The assessee's appeal, filed without accompanying the proof of payment of the tax assessed as required under the amended provision, was rejected. In short, the issue was whether the imposition of restriction by the amendment of the section could affect the assessee's right of appeal from a decision in proceedings which commenced prior to such amendment and which right of appeal was free from such restriction under the section as it stood at the time of the commencement of the proceedings. Das, J., speaking for the Bench, observed:

> "Whenever there is a proposition by one party and an opposition to that proposition by another a 'lis' arises. It may be conceded, though not deciding it, that when the assessee files his return a 'lis' may not immediately arise, for under Section 11(1) the authority may accept the return as correct and complete. But if

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the authority is not satisfied as to the correctness of the return and calls for evidence, surely a controversy arises involving a proposition by the assessee and an opposition by the State. The circumstance that the authority who aises the dispute in the interest of the State and in so acting only represents the State. It will appear from the dates given above that in this case the 'lis' in the sense explained above arose before the date of amendment of section. Further even if the 'lis' is to be taken as arising only on the date of assessment, there was a possibility of such a 'lis' arising as soon as proceedings started with the filing of the return or, at any rate, when the authority called for evidence and started the hearing and the right of appeal must be taken to have been in existence even at those dates. For the purposes of the accrual of the right of appeal the critical and relevant date is the date of initiation of the proceedings and not the decision itself."

10. In GARIKAPATI VEERAYA v. N. SUBBIAH CHOUDHRY AND OTHERS (AIR 1957 SC 540), a Constitution Bench of the Supreme Court, formulated the principles, from the decisions in Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh, supra, Ganpat Rai Hiralal v. Aggarwal Chamber of Commerce Ltd. AIR 1952 SC 409, R.M. Seshadri v. Province of Madras AIR 1954 Mad. 543, In Re Reference under Section 5, Court Fees Act, AIR 1955 Bom. 287 and Sawaldas Madhavdas v. Arati Cotton Mills Ltd. AIR 1955 Bom. 332, as follows:

(a) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceedings.
(b) The right of appeal is not a mere matter of procedure but is a substantive right.
(c) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.
(d) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

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(e) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

11. Another Constitution Bench of the Supreme Court in the case of VITTHALBHAI NARANBHAI PATEL v. COMMISSIONER OF SALES TAX, MADHYA PRADESH, NAGPUR (1961 [12] STC 219 SC) held as follows:

"That leaves over for consideration the question whether Hoosein Kasam Dada's case, should be applied. That also presents some difficulty to us. We have before us the petition which was made in the High Court, and we cannot allow that to be amended. That petition does not mention the dates on which the return was filed, so that we could apply the dictum of this Court in Hoosein Kasam Dada's case. Dr. Barlingay deduces the date of filing of the return from the dates on the challans accompanying the payment of tax in the treasury, and argues that this was prior to the amendment. He contends that this is sufficient for the application of the principle in the said case.

The decision in Hoosein Kasam Dada's case proceeded on the ground that when a lis commences, all rights get crystallised and no clog upon a likely appeal can be put, unless the law was made retrospective, expressly or by clear implication. From the record of this case, we cannot say when the lis commenced, and unless it can be proved conclusively that it was before the amendment of the law, the rule in Hoosein Kasam Dada's case, cannot apply. There is no averment that a right of appeal had vested, and has been wrongly taken away."

12. Mr. T. Ayyasamy, learned Special Government Pleader (Taxes), however, relied upon the Constitution Bench decision in HARDEODAS JAGANNATH v. STATE OF ASSAM,reported in (1970) 26 STC 10, to contend that the law prevailing on the date of the order of assessment is applicable and that the earlier decision in Hoosein Kasam Dada's case, supra, stands impliedly overruled. We are unable to accept the contention of the learned counsel for the Revenue.

13. In the case of Hardeodasm, supra, the registered dealer's business was raided and thereafter a notice was issued dated 4th April, 1959 under Sec.19A of the Assam Sales Tax Act, 1947 for reassessment in respect of the half-yearly return periods ending on September 30, 1956, March 31, 1957 and September 30, 1957. Thereafter, orders of re-assessments were passed. The appellant filed an appeal against the orders of reassessment. In the meanwhile, Sec.30 of the said Act was amended with effect from

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April 1, 1958, as a result of which, the appellants were required to pay the amount of assessed tax or other reduced amount as may be directed by the Assistant Commissioner of Taxes before filing appeals. It was contended that the amended provisions of Section 30 should not be applied because the periods of assessments were prior to 1st of April, 1958. This contention was summarily rejected by the Supreme Court which observed that the assessment for the periods in question had been completed after the amendment came into force. Hence the amended provisions would apply. This was not a case where the returns had been filed by the assessee prior to the coming into effect of the amendment. From the facts, which were set out in the judgment, it appears that the proceedings of reassessment commenced in April 1959, after the amendment came into force. It was not even contended before the Supreme Court that the reassessment proceedings were initiated prior to the amendment. It was only contended that the period for which the dealer was being reassessed was prior to the amendment and hence the amendment did not apply. This contention was negatived by the Supreme Court. It is well-settled that a judgment has to be understood in the light of the facts involved therein. We fail to understand as to how the decision in Hardeodas Jagannath case can be said to overrule the decision of the Supreme Court in the case of Hoosein Kasam Dada case, supra, by implication, as contended by the learned counsel for the Revenue.

14. The next question is as to when such a pre-existing right of appeal becomes vested in a party – Is it on the date of filing of the returns? or is it on the date when a pre-assessment notice is issued? or it is on the date when proceedings are initiated for reopening an assessment?.

15. Learned counsel for the appellants drew our attention to the decision of the Supreme Court in the case of GHANSHYAMDAS v. REGIONAL ASSISTANT COMMISSIONER OF SALES TAX, NAGPUR AND OTHERS (1963[14]STC 976). The Supreme Court in that case was dealing with escaped assessment. Under Section 11-A of the Central Provinces and Berar Sales Tax Act, 1947, if the Commissioner was satisfied that any turnover of a dealer for any period had escaped assessment, the Commissioner could, within three years from the expiry of the period proceed to assess the tax payable on such turnover. The core issue before the Court was whether the assessment of the escaped turnover was within the prescribed period. To decide this issue, the Court discussed when assessment proceedings can be said to be intiated. It said (at page 986):

> "From the foregoing discussion it is seen that in the case of a registered dealer there are four variations in the matter of assessment of his turnover: (1) He submits a return by the date prescribed and pays the tax due in

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terms of the said return; the Commissioner accepts the correctness of the return and appropriates the amount paid towards the tax due for the period covered by the return. (2) The Commissioner is not satisfied with the correctness of the return; he issues a notice to him under Section 11(2), and makes an enquiry as provided under the Act, but does not finalise the assessment. (3) The registered dealer does not submit a return; the Commissioner issues a notice under Section 10(3) and Section 11(4) of the Act; and (4) the registered dealer does not submit any return for any period and the Commissioner issues notice to him beyond three years. If the return was accepted and the amount paid was appropriated towards the tax due for the relevant period, it means that there has been a final assessment in regard to the said period. If any turnover escaped assessment, clearly it can be reopened only within the period prescribed in Section 11-A. In the case where a return has been made, but the Commissioner has not accepted it, and has issued a notice for enquiry, the assessment proceedings will certainly be pending till the final assessment is made. Even in a case where no return has been made, but the Commissioner initiated proceedings by issuing a relevant notice either under Section 10(3) or under Section 11(4), the proceedings will be pending thereafter before the Commissioner till the final assessment is made. But where no return has been made and the Commissioner has not issued any notice under the Act, how can it be held that some proceedings are pending before the Commissioner when none existed as a matter of fact?"

It was argued before the Supreme Court that a statutory obligation to make a return within a prescribed time would amount to initiation of proceedings. This contention was negatived by the Supreme Court. It held that the proceedings will commence after the return was submitted and would continue until final order of assessment was made in regard to the said return. Once the proceedings were initiated no question of limitation will arise. Similar are the observations made in the case of REGIONAL ASSISTANT COMMISSIONER OF SALES TAX, INDORE v. MALWA VANASPATI AND CHEMICAL COMPANY LIMITED (1968[21]STC 431 SC) and STATE OF PUNJAB v. MURLIDHAR MAHABIR PARSHAD (1968[21]STC 29 SC).

16. In OSWAL AGRO MILLS LTD. v. STATE OF PUNJAB AND OTHERS (2005[139]STC 51), a Division Bench of the Punjab and Haryana High Court, after considering the various decisions of the High Courts and the Supreme Court, concluded as under:

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"In civil proceedings, lis commences on the presentation of the plaint or in cases claiming compensation under the Motor Vehicles Act on filing claim application. The question is when lis can be said to commence under the taxation laws. Section 25 of HGST Act enjoins a duty upon an assessee to file quarterly return and deposit tax thereon. If such returns are accepted, there is no lis. Consequently, there would be no occasion for the parties to file an appeal. However, if such returns are not accepted, the cause of action will arise on the date when returns are required to be filed. The cause of action can be said to be arisen also when an assessee is called upon to furnish return on his failure to do so in terms of the provisions of the old Act. In fact, that is the relevant date as in Vitthalbhai Naranbhai Patel's case [1961] 12 STC 219 (SC).

In view of the above discussion, we hold that right of appeal is a vested right as it exists on the date of commencement of lis. The lis can be said to commence under the HGST Act on the date when return is filed or is required to be filed. Therefore, the provisions of Section 39(5) of the HGST Act would continue to govern the right of appeal vested in the petitioner which is saved in terms of section 4 of the Punjab General Clauses Act (as applicable to State of Haryana)."

17. In SIEMENS INDIA LTD. v. THE STATE OF MAHARASHTRA (62 STC 40), a Division Bench of the Bombay High Court has held that assessment proceedings against a registered dealer commence when he files his return and against an unregistered dealer, when the Commissioner calls upon him to file a return of his turnover. When the registered dealer has not filed a return, the proceedings commence when the Commissioner issues a notice. The Division Bench further held that an appeal is a continuation of assessment proceedings and the right of appeal is a substantive right which gets crystallised when assessment proceedings are initiated.

18. Similar view was taken by a Division Bench of the Patna High Court in BAHADUR KAMAKHYA NARAYAN SINGH v. STATE OF BIHAR (1962[46]ITR 516 Pat.) and also by the Allahabad High Court in COMMISSIONER, SALES TAX, UTTAR PRADESH v. TIKA RAM ARTHI (1977 [39]STC 147 All.).

19. Learned counsel for the appellants also drew our attention to the Division Bench judgment of the Andhra Pradesh High Court in STATE OF ANDHRA PRADESH v. HINDUSTAN SHIPYARD

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LIMITED (1988[68]STC 220 AP) wherein it was held that the amendment taking away the power of stay of the Sales Tax Appellate Tribunal would not apply to 'assessment periods' prior to that amendment indicating thereby relevance of the period of the return.

20. Learned counsel appearing for the Revenue submitted that the decisions of the Bombay High Court and Punjab and Haryana High Court in the case of Siemens India Limited and Oswal Agro Mills Limited (supra) respectively would not apply in the context of the scheme of the TNGST Act and the Rules framed thereunder. He urged that those decisions were rendered in the context of the provisions of the Bombay Sales Tax Act and Punjab General Sales Tax Act. The provisions in the said Acts vest the Commissioner the power to issue notice to the assessee calling upon him to file the returns whereas there is no such provision under the TNGST Act and the rules framed thereunder. In our opinion, the distinction sought to be made by the learned counsel for the Revenue is without any difference. It is seen that the judgments of the Bombay High Court and Punjab and Haryana High Court do not turn on that provision at all. In Siemens India Limited case, supra, the assessee filed its returns voluntarily without being called upon by the Commissioner to file its return. In Oswal Agro Mills case, supra, also the assessee had filed its return prior to the amendment coming into force.

21. Learned counsel appearing for the Revenue alternatively submitted that the reassessment order under Sec.16 (1)(a) of the Act will not result in the wiping out of the original assessment order and the original order of assessment retains its character and identity. In other words, the proceedings under Sec.16 of the Act are totally distinct and different. Learned counsel also drew our attention to the decision of a Division Bench of this Court in JOINT COMMERCIAL TAX OFFICER-II, TUTICORIN v. EKAMBAREESWARAR COFFEE AND TEA WORKS (1983 STC 457) wherein it was held that the reassessment order passed under Section 16(1)(a) of the Act will not result in the obliteration of the original assessment order and that original assessment order retains its character and identity. Learned counsel also referred to the decision of the Supreme Court in the case of COMMISSIONER OF INCOME TAX v. SUN ENGINEERING WORKS PVT. LTD. (198 ITR 397). The reliance placed on the said decision is clearly misconceived. The question in that case was as regards the right of the assessee to contest matters closed by the original assessment in a revision of assessment under Sec.16 of the Act. In the context of the question posed before the Court, it was held that the revision of notice under Section 16 of the Act was a limited right given to the Revenue and the assessee could not utilise that opportunity to agitate matters which had

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become final in the original assessment. In a revision of assessment under Section 16 of the Act, the emphasis is on the return. Under Sec.16, the tax authority passes a judgment on the correctness of the return. Sec.16(2) of the Act provides for levy of penalty in a situation involving 'wilful non-disclosure'. The expression 'non-disclosure' itself indicates that the assessment under Sec.16 is concerned with the returns. The nature of re-assessment is nothing but an assessment itself.

22. In the case of STATE OF MADRAS v. LATHEEF HAMEED & CO. (1968) 21 STC 476, a Division Bench of this Court observed as follows:

> "There is no controversy before us that the assessee's right to file an appeal and a further appeal under the earlier Act is a vested right. Such a right becomes vested in the assessee, the mement he filed his return which commenced the assessment proceedings ..."

23. Our attention was also drawn to the decision of the Tamil Nadu Taxation Special Tribunal in the case of HUGS ADVERTISING INDUSTRIES AND OTHERS v. COMMERCIAL TAX OFFICER, VADAPALANI ASSESSMENT CIRCLE, CHENNAI AND OTHERS (2000) 119 STC 591 wherein the Tribunal observed as follows:

> "We also give considerable weight to the Full Bench judgment in Tamil Nadu Small Scale Industries Corporation Limited v. State of Tamil Nadu [1989] 74 STC 303 (Mad). They have diluted the emphasis on 'lis' and therefore the emphasis on commencement of proceedings in tax laws, become important. In this connection, we can also refer to rules 7 to 18 of the Tamil Nadu General Sales Tax Act. They prescribed the dates when dealers are obliged to file returns, under various circumstances. Even if a nil return is filed and accepted, there is no guarantee that it will not be re-opened. Any assessment order can also be revised. It is not proper to leave the discretion to the authorities, as to when they call for accounts or when they issue a pre-assessment notice or a revision notice. It is wiser and safer to adopt a firm date as the date on which the vested right of appeals vests on the assessee."

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24. It is conceded by the learned counsel for the Revenue that no appeal has been filed against the above judgment of the Taxation Special Tribunal and that the judgment, therefore, has become final. It appears that pursuant to the said judgment of the Taxation Special Tribunal dated 22-11-1999, hundreds of appeals have been entertained and disposed of by the Appellate Assistant Commissioner Sec.31 of the Act and by the Sales Tax

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Appellate Tribunal under Sec.36 of the Act without insisting for pre-deposit of 25% of the disputed tax as per the amended provisions of the Act.

25. In view of the foregoing discussion, we hold that the crucial date on which the right of the assessees to prefer an appeal under Sec.31 or Sec.36 of the Act is the date on which the returns are filed under the Act. In all these appeals, returns were filed long prior to the date when the provisions of Sec.31 of the Act was amended by virtue of Act 14 of 1999. Further more, it is not disputed by the parties that the aforesaid amendments to the Act have not been given retrospective effect as and from an anterior date and those amendments are prospective. Therefore, the appeals are liable to be entertained without insisting of pre-deposit of 25% of the disputed tax as per the amended provisions of the Act.

26. In the result, the order of the learned single Judge, dated 17-8-2005, in W.P. Nos.36661 to 36666 of 2004 is set aside. The writ appeals preferred by the Revenue, i.e. W.A. Nos.3093, 3710 and 4085 of 2003, are dismissed and the appeals filed by the assessees, i.e. W.A. Nos.1826 to 1831 of 2003 are allowed. The appellate authority is directed to entertain the appeals filed by the assessees/appellants without insisting for pre-deposit of 25% of the disputed tax and dispose of the same in accordance with law. Connected WAMP Nos.4911, 6070, 6736 of 2003 are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1.The Appellate Assistant
  Commissioner (CT)
  Pollachi

2.The Appellate Assistant
  Commissioner (CT)
  Virudhunagar

3. The Deputy Commercial Tax Officer,
Gopichettipalayam.

4. The Appellate Assistant Commissioner (CT)
Erode.

5. The Deputy Commercial Tax Officer,
Tirupur Central I Assessment Circle, Tirupur.

6. The Commercial Tax Officer I, Sivakasi.

7. The Deputy Commercial Tax Officer - II, Sivakasi.

+ 2 ccs to Mr.A. Thiyagarajan, Advocate SR No.47169 to 47170

+ 6 ccs to Mr.N. Inbarajan, Advocate SR No.47153

+ 4 ccs to Spl Government Pleader (Taxes)
SR Nos.47362 to 47365

W.A. Nos.3093, 3710 and 4085 of 2003
and
W.A. Nos.1826 to 1831 of 2005

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